IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

MONDAY, THE 8TH JANUARY 2007 / 18TH PAUSHA 1928

WP(C).No. 14837 of 2006(N)

AGAINST THE ORDER IN IA.2923/05 IN
OS.420/1997 of ADDL.MUNSIFF COURT,CHERTHALA

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PETITIONER:

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1. PANKAJAKSHY, W/O.THANKAPPAN,
   VENDUVELIYIL, VARANAM MURI, THANNEERMUKKAM,
   VADAKKU VILLAGE.

2. HARIDASAN, S/O.THANKAPPAN,
   VENDUVELIYIL, VARANAM MURI, THANNEERMUKKAM,
   VADAKKU VILLAGE.

3. UDAYAN, S/O.THANKAPPAN,
   VENDUVELIYIL, VARANAM MURI,
   THANNEERMUKKAM, VADAKKU VILLAGE.

4. AJAYKHOSH, S/O.THANKAPPAN,
   VENDUVELIYIL, VARANAM MURI, THANNEERMUKKAM,
   VADAKKU VILLAGE.

5. ANITHA, D/O.THANKAPPAN,
   VENDUVELIYIL, VARANAM MURI,
   THANNEERMUKKAM, VADAKKU VILLAGE.

BY ADV. SRI.D.PREM KAMATH

RESPONDENTS:

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1. SISUPALAN, S/O.RAMANKUTTY,
   PUTHENVELIYIL, VARANAM MURI,
   THANNEERMUKKAM, VADAKKU VILLAGE.

2. PURUSHAN, S/O.KRISHNAN, KANAMKUTTIYIL,
   VARANAM MURI, THANNEERMUKKAM, VADAKKU VILLAGE.

3. DIVAKARAN, S/O.KRISHNAN,
KALAPRAYIL, VARANAM MURI,
THANNEERMUKKAM VADAKKU VILLAGE.

4. GANGADHARAN, S/O.KRISHNAN,
PULATHARAYIL, VARANAM MURI,
THANNEERMUKKAM, VADAKKU VILLAGE.

5. PADMANABHAN, S/O.KRISHNAN,
PULATHARAYIL, VARANAM MURI,
THANNEERMUKKAM, VADAKKU VILLAGE.

6. SREEDHARAN, S/O.KRISHNAN,
VENDUVELIYIL, VARANAM MURI,
THANNEERMUKKAM, VADAKKU VILLAGE.

7. CHOLLAMMA, D/O.NARAYANI,
PULTHARAYIL, VARANAM MURI, THANNEERMUKKAM,
VADAKKU VILLAGE.

8. PONNAMMA, D/O.NARAYANI, PULTHARAYIL,
VARANAM MURI, THANNEERMUKKAM VADAKKU VILLAGE.

9. RAVEENDRAN, PERUMBALLY VEETTIL,
VAYALAR MURI, VAYALAR KIZHAKKU VILLAGE.

10. GOPALAKRISHNAN @ CHERUKKAPPAN,
PERUMBALLY VEETTIL, VAYALAR MURI,
VAYALAR KIZHAKKU VILLAGE.

11. SASIDHARAN @ SASI OF PERUMBALLY
VEETIL, VAYALAR MURI, VAYALAR KIZHAKKU
VILLAGE.

12. UDAYAN OF PERUMBALLY VEETTIL,
VAYALAR MURI, VAYALAR KIZHAKKU VILLAGE.

13. PONNAN OF PERUMBALLY VEETTIL,
VAYALAR MURI, VAYALAR KIZHAKKU VILLAGE.

BY ADV. SRI.G.GOPAKUMAR (CHERTHALA)

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 08/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX:

EXT.P1: COPY OF IA 2923/05 FILED BY PETITIONERS

EXT.P2: COPY OF OBJECTION FILED BY RESPONDENTS

EXT.P3: COPY OF ORDER DT.26/11/05

EXT.P4: COPY OF WRITTEN STATEMENT FILED BY PETITIONERS DT.16/6/05

//True copy//

PA TO JUDGE.

M.SASIDHARAN NAMBIAR,J.

W.P.(C) .NO.14837 OF 2006

Dated 8th January 2007

J U D G M E N T

Petitioners are defendants 16 to 20 in O.S.420/97, on the file of Additional Munsiff court,Cherthala. First respondent is plaintiff and other respondents are other defendants. Petitioners filed I.A.2923/05, an application for appointment of a commission under Order XXVI Rule 9 of Code of Civil Procedure. Under Ext.P3 order the petition was dismissed. It is challenged in this petition filed under Article 227 of Constitution of India.

2. Learned counsel appearing for petitioners and first respondent were heard.

3. Suit is for declaration of title and recovery of possession and for demarcation of the boundaries. A commission was appointed. Commissioner submitted a report and plan. Ext.P1 application was filed by petitioners to appoint another commissioner to identify the property with reference to re-survery plan. Arguments of learned counsel appearing for

petitioners was that commissioner was appointed earlier at the instance of plaintiff and he identified their property and as the re-survey was finalised and no appeal was filed by the plaintiff, plaintiff cannot challenge the re-survey and it is necessary to bring this fact on record and therefore a commission should have been appointed by the court below as sought for. Learned counsel appearing for first respondent submitted that there is no infirmity in Ext.P3 order warranting interference and the petition is only to be dismissed.

4. What was argued by learned counsel appearing for petitioners was that in view of finalisation of re-survey, which has become final, court cannot ignore the re-survey and grant the relief sought for by plaintiff on the basis of report submitted by the commissioner. That is a fact to be decided by learned Munsiff on the evidence. As the case of petitioners was that because of the finalisation re-survey proceedings plaintiff is not entitled to the decree sought for, I do not find it necessary to appoint a commission as sought for. Petitioners are at liberty to produce re-survey plan as well as the proceedings therein. In such

circumstances, Ext.P3 order cannot be interfered in exercise of extra ordinary jurisdiction of this court under Article 227 of Constitution of India.

Writ petition is dismissed.

M.SASIDHARAN NAMBIAR,
JUDGE.

uj.